IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ram Chandra Choudhary. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 1089/2006
against the Order dated 3-9-2005 passed
by the Additional Sessions Judge, Parbatsar,
district Nagaur, in Cri. Revision No.11/2004.

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Date of Order: September 01, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. P.P. Chaudhary, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By the instant criminal miscellaneous petition under Section 482 Cr.P.C., the petitioner has assailed the order dated 3-9-2005 passed by the Additional Sessions Judge, Parbatsar, district Nagaur (for short, "the Revisional Court" hereinafter) in Criminal Revision No. 11/2004, whereby the revision petition filed by the petitioner against the order dated 8-8-2000 passed by the Additional Chief Judicial Magistrate, Makrana, district Nagaur (for short, "the trial Court" hereinafter), was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Perused the order impugned.

Complainant Mahipal Sharma filed a complaint before the trial Court alleging therein that on 22-8-1997, he purchased the milk from one Suja Ram, who is said to be the proprietor of firm M/S. Kalpana Restaurant, Bus Stand, Makrana, which on being analysed by the Public Analyst was not found as per the standard prescribed under Appendix "B" of Prevention of Food Adulteration Rules (for short, "the Rules" hereinafter) and, therefore, it was adulterated under the provisions of the Prevention of Food Adulteration Act, 1954 (for short, "the PFA Act").

It is contended by the learned counsel for the petitioner that at the first instance the complainant had no right to file a private complaint. It is also submitted that the provisions of Paragraph 26 of the Milk and Milk Product Order, 1992 (for short, "the Order of 1992" hereinafter) are not attracted in the instant case. It has further been submitted that as required by Clause 49 of the Order of 1992 no permission has been obtained by the concerned registering authority.The next contention raised by the learned counsel for the petitioner is that in view of the provisions of Section 17 (2) of the PFA Act, the petitioner is not remotely connected with the offence. Learned Public Prosecutor supported the order impugned.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

The Central Government, in exercise of powers under Section 3 of the Essential Commodities Act,1955, having formed the opinion that for maintaining and increasing supply of liquid milk of desired quality in the interests of the general public, it is necessary to provide for regulating the production, supply and distribution of milk and milk product framed the rules in name of Milk and Milk Product Order, 1992. Section 26 provides for requirement of certification, packing, marking and labelling. Section 29 provides for previous sanction for prosecution. Section 29 is extracted as follows :-

> "29. In the case of any contravention of any of the provisions of this Order by the holder of registration certificate or any other person, the concerned Registering Authority shall be empowered to initiate suitable action against the holder of registration certificate or any other person, as the case may be."

In the instant case, no sanction has been obtained for the prosecution from the Registering Authority. It may further be noticed that a prosecution can be filed only by the persons referred in Section 28, which reads as follows :-

> "28. **Prosecution**: Any person,-
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> (a) handling or processing or controlling or manufacturing milk or any milk product without obtaining a registration certificate as required under this Order, or
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> (b) Continuing to manufacture or process or handle or pack milk or milk product after suspension or revocation or expiry of registration certificate issued, or

> © handling, processing, manufacturing, controlling or packing milk or milk product in contravention of the provisions of this Order or of the terms and conditions of the registration certificate, or
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> (d) producing any item in excess of the quantity specified for that item in the registration certificate, or
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> (e) making any manufacturing facility in contravention of the provisions of sub-paragraph (1) of paragraph 5, shall, in addition to suspension, revocation, or cancellation of his registration certificate, be liable to prosecution for the contravention of the provisions of this Order."

The Chairman does not fall in any of the category referred in Section 28.

This Court in Narendrapal Kotadia Vs. State reported in 2001 (1) Cr.L.R. 589 following the decision of the Apex Court in P.Sirajuddin etc. Vs. The State of Madras etc. reported in A.I.R. 1971 S.C. 520 cautioned that the courts of Magistrate should be extremely careful in a case where complaint is filed by a private party complaining to an act of a public servant in discharge of his duty. Repeatedly caution has been given that court must ensure discouragement of fraudulent, doubtful and impolitic prosecution at the instance of the vindictive or jealous private complainant.

This Court in Uttari Rajasthan Sahakari Dugdh Uttapadak Sangh Ltd. and Anr. Vs. Ram Kishan and Anr.,

S.B.Criminal Revision No.1118/03 decided on 22.7.2004 quashed and set aside the order impugned therein on similar facts and therefore, in view of the aforesaid, the prosecution against the petitioners is not sustainable and thus, allowing the order impugned to stand would be nothing but abuse of the process of the Court.

Section 17 of the P.F.A. Act pertains to the offences by companies and reads as under:-

> "17. Offences by companies.- (1) Where an offence under this Act has been committed by a company-
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> (a) (i) the person, if any, who has been nominated under sub-section (2) to be in charge of, and responsible to the company for the conduct of the business of the company (hereafter in this section referred to as the person responsible), or
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> (ii)where no person has been so nominated, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company; and
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> (b) the company,
>
> shall be deemed to be guilty of the offence and shall be liable to be proceeded against the punished accordingly.
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> Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge and that the exercised all due diligence to prevent the commission of such offence.
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> (2)Any company may, by order in writing, authorize any of its directors or managers (such manager, being employed mainly in a managerial or

supervisory capacity) to exercise all such powers and take all such steps as may be necessary or expedient to prevent the commission by the company of any offence under this Act and may give notice to the Local (Health) Authority, in such form and in such manner as may be prescribed, that it has nominated such director or manager as the person responsible, along with the written consent of such director or manager for being so nominated.

Explanation.- Where a company has different establishments or branches or different units in any establishment or branch different persons may be nominated under this sub-section in relation to different establishments or, branches or units and the person nominated in relation to any establishment, branch or unit shall be deemed to be the person responsible in respect of such establishment, branch or unit.

(3)The person nominated under sub-section (2) shall, until-

(i)further notice cancelling such nomination is received from the company by the Local (Health) Authority; or

(ii)he ceases to be a director or, as the case may be, manager of the company; or

(iii)he makes a request in writing to the Local (Health) Authority, under intimation to the company, to cancel the nomination (which request shall be complied with the Local (Health) Authority), whichever is the earlier, continue to be the person responsible:

Provided that where such person ceases to be a director or, as the case may be, manager of the company, he shall intimate the fact of such cesser to the Local (Health) Authority;

Provided further that where such person makes a request under Cl. (iii), the Local (Health) Authority shall not conceal such nomination with effect from a date earlier than the date on which the request is made.

> (4)Notwithstanding anything contained in the foregoing sub-sections, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, not being a person nominated under sub-section (2) such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
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> Explanation- For the purpose of this section-
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> (a) "company" means any body corporate and includes a firm or other association of individuals;
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> (b) "director" in relation to a firm, means a partner in the firm; and
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> (c) "manager" in relation to a company engaged in hotel industry, includes the person in charge of the catering department of the hotel managed or run by it."

The provisions of Section 141 of the Negotiable Instruments Act, 1881 (for short, "the Act, 1881" hereinafter) are para meteria of the provisions of Section 17 of the P.F.A. Act and Section 34 of the Drugs and Cosmetics Act, 1940 (for short, "the Act of 1949" hereinafter). Recently, the Hon'ble Supreme Court, while considering the provisions of Section 141 of the Act, 1881 in S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhall, (2005) 8 SCC 89, held that it is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible

for the conduct of business of the company. This averment is an essential requirement of Section 141 of the Act 1881 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 of the Act 1881 cannot be said to be satisfied.

Sections 16 and 17 of the P.F.A. Act lay the onus on the prosecution to prove that the proprietors of the company were incharge and responsible for the conduct of the business of the company. Unless this initial onus is discharged, there is no onus upon the accused to prove that the offence was committed without his knowledge.

Section 34 of the Act of 1940 and Section 17 of the PFA Act are practically identical and in para meteria. Both these sections speak about the offences committed by the companies. If these two sections are carefully read, there is no manner of doubt that the vicarious liability of a person for being prosecuted for an offence committed under the Act of 1940, and the P.F.A. Act, by a company arises if, at the relevant time of commission of the offence, the person accused of was in charge of and was also responsible to the company for the conduct of its business.

In L.P. Gupta Vs. State of Rajasthan, 1998 FAJ 201, this Court held that there is no allegation either in the complaint or in any of the documents filed along with the complaint that any of the petitioners were incharge of and responsible to the

company for the conduct of the business of the establishment by the company when the sample was taken. Merely because the petitioners happened to be the Directors or Chairman-cum-Managing Director of the company, without any evidence or averments in the complaint that they were incharge of and responsible to the company for the conduct of the business at Jaipur in Hotel Clarkes, Ajmer, their prosecution is not sustainable in the eye of law. The order taking cognizance against them is without any evidence and without application of mind.

In the instant case, the petitioner was neither nominated under Section 17 (2) of the PFA Act as the person in-charge and responsible for the conduct of business of the Company, nor being the Chairman of the Company, he does not fall in any of the category referred in Section 28 of the PFA Act.

In the instant case, (1) no prior sanction to initiate the action/prosecution of the petitioner from the Registering Authority was obtained as envisaged under Section 29 of the P.F.A. Act; (2) the petitioner does not fall in any of the categories enumerated in Section 28 of the P.F.A. Act; and (3) there is no averment in the complaint to comply the requirement as envisaged under Section 17 of the P.F.A. Act that the petitioner was incharge of and was responsible to the company for the conduct of the business of the company, or the petitioner

has been nominated under sub-section (2) of Section 17 of the P.F.A. Act to be incharge of and responsible to be company for the conduct of the business of the company and, therefore, in view of the aforesaid, the prosecution against the petitioner is not sustainable and, thus, allowing the orders impugned and prosecution thereunder would be nothing but an abuse of process of the Court and would result in serious miscarriage of justice.

Consequently, the criminal misc. petition is allowed. The order dated 8-8-2000 passed by the trial Court taking cognizance of the offence, as also the order impugned dated 3-9-2005 passed by the Revisional Court dismissing the revision petition, are set aside and the proceeding of Criminal Case No. 118/2000 against the petitioner stands quashed.

(H..R.PANWAR), J.

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